

10/28/02

Decision 02-10-069

October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into Distributed
Generation.

Rulemaking 99-10-025

**ORDER DENYING REHEARING
OF DECISION 02-03-057****I. SUMMARY**

Section 2827 of the Public Utilities Code establishes “a program to provide net energy metering for eligible customer-generators.” Decision 02-03-057 determined that Section 2827 limits the costs, except to the extent otherwise related to generation, that customer-generators must bear to those whose incurrence is required for purposes of safety and reliability. Pacific Gas and Electric Company (“PG&E”) and Kenneth A. Adelman each filed an application for rehearing of Decision 02-03-057. PG&E argues that this interpretation, although within the Commission’s discretion, provides customer-generators an excessive exemption, and Mr. Adelman argues that the exemption is insufficient. As shown below, however, the Commission’s interpretation of Section 2827 is consistent with both its language and purpose. Since neither party has shown legal error, therefore, rehearing is denied.

II. STATUTORY BACKGROUND

Section 2827 was enacted in 1995, and amended in 1998, 2000, and 2001. Section 2827 (a) declares,

[A] program to provide net energy metering for eligible customer-generators is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California’s energy supply infrastructure, enhance the continued

diversification of California's energy resource mix, and reduce interconnection and administrative costs for electricity supplies.

To carry out this program, Section 2827(d) requires that each contract and tariff for net metering be the same as that which would apply if the customer were not eligible to participate:

Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charge, to the contract or tariff to which the same customer would be assigned if such customer was not an eligible customer-generator, except that eligible customer-generators shall not be assessed standby charges on the electrical generating capacity or the kilowatt-hour production of an eligible solar or wind electrical generating facility.

In explanation, Section 2827(d) clarifies that the inclusion in any such contract or tariff of any charge not applicable to comparable customers is prohibited:

Any new or additional demand charge, standby charge, customer charge, minimum monthly charge interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this legislation, and shall not form a part of net energy metering contracts or tariffs.

Still, under Section 2827(f), the customer-generator's system must prove safe and reliable in order to qualify:

A solar or wind turbine electrical generating system, or a hybrid system of both, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters

Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

Nonetheless, Section 2827(f) further provides that compliance by a customer-generator with these standards and rules exempts it from responsibility for any additional costs relating to safety and reliability:

A customer-generator whose solar or wind turbine electrical generating system, or a hybrid system of both, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

On September 24, 2002, the Governor signed into law AB 58, which will make effective on January 1, 2002, various changes to Section 2827, none of which is pertinent here.

III. PROCEDURAL HISTORY

On October 21, 1999, the Commission instituted Rulemaking 99-10-025 “to develop policies and rules regarding the deployment of distributed generation, such as interconnection standards, and rules for participation in these new markets.” “Order Instituting Rulemaking into Distributed Generation,” mimeo, at 1. The Commission explained, “With the anticipated growth of distributed generation products in the coming years, there is a need to review the current regulatory framework so that the deployment of distributed generation can be facilitated, and unnecessary barriers eliminated.” Id. at 3. Especially, changes were needed in the existing rules governing interconnection. At the same time, these rules “must ensure that any connections to the distribution system do not interfere with the safety and reliability of the distribution system.” Id. at 8. Also, they must be applied without discrimination and neutrally with regard to the technology employed. Id.

On September 29, 2001, the Assigned Commissioner issued a ruling, directing PG&E, San Diego Gas and Electric Company (“SDG&E”), and Southern

California Edison Company (“SCE”) each to file a proposal regarding various aspects of distributed generation. In particular, they were ordered to address how “to implement Pub. Util. Code § 2827(d) with respect to identification and treatment of interconnection charges.” “Assigned commissioner’s Ruling on Interconnection Fees for Distributed Generation,” mimeo, at 6. On October 30, 2001, PG&E, SDG&E, and SCE, along with the California Solar Energy Industries Association (“CalSEIA”), each filed its proposal. Comments on the proposals were filed by SDG&E, SCE, CalSEIA, the Office of Ratepayer Advocates, Mr. Adelman, and jointly by the California Department of General Services, the University of California, and the California State University. A reply was separately filed by PG&E, SDG&E, SCE, CalSEIA, and Mr. Adelman.

On March 21, 2002, the Commission issued Decision 02-03-057, interpreting Section 2827. It identified five categories of cost associated with generating systems and their interconnection:

1. Generating facility costs;
2. Interconnection facility costs;
3. Distribution system improvement costs;
4. Interconnection study costs; and
5. Interconnection application review fees.

Mimeo at 3-4. It observed that all parties to the proceeding agree that customer-generators are exclusively responsible for the first category. With respect to the second, it concluded that

eligible customer-generators must bear the costs of interconnection facilities . . . necessary to meet the safety and performance requirements of the National Electrical Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, and, where applicable, rules of the Public Utilities Commission regarding safety and reliability for the interconnection in question.

Id. at 7. Next, on the basis that customer-generators should be likened to residential customers for purposes of interpreting Section 2827(d), it determined that all other costs should be borne by ratepayers generally. It then directed PG&E, SDG&E, and SCE to track these costs in order to “assess whether initial or supplemental review fees need to be modified (or differentiated by size or type of installation), whether any standardization of study cost is possible, and the real distribution system cost impact of distributed generation, especially those projects that are eligible for net energy metering.” Id. at 10-11. Finally, it authorized PG&E, SDG&E, and SCE each to establish a memorandum account to record the costs of interconnecting customer-generators with projects between 10 kilowatts and one megawatt in size.

On April 24, 2002, Mr. Adelman filed an application for rehearing of Decision 02-03-057. In his view,

[T]he Decision violates the express statutory limitations on rates and charges that can be imposed on qualified customers under Pub. Util. Code Section 2827(d); statutory limitations on the additional controls that customers can be required to install or pay for under 2827(f); statutory provisions specifying the relative responsibility of eligible customers and utilities for metering equipment under Pub. Util. Code Section 2827(b) (3); requirements of Pub. Util. Code 2827(c)(1) concerning the nature of contracts and tariffs that must be adopted to implement California’s net metering law; the express statement of legislative intent contained in Pub. Util. Code Section 2827(a); and the mandate contained in Pub. Util. Code Section 1705 that Commission decisions contain findings of fact and conclusions of law on all issues material to the decisions.

Application at 2. On May 9, 2002, PG&E filed a response to Mr. Adelman’s application, recommending denial.

On April 24, 2002, PG&E also filed an application for rehearing of Decision 02-03-057. According to PG&E, “The correct legal meaning of Section 2827(d) is that it simply protects net-metering customers from paying ‘new’ or

‘additional’ interconnection charges beyond the charges they would pay for interconnecting their generators to the utility system if they were not eligible for net-metering under Section 2827.” Application at 1. By relief, PG&E “urges . . . an interpretation of P.U. Code Section 2827 under which the Commission is not required to exempt net-metered customers from certain interconnection costs, but retains the policy discretion to do so.” *Id.* at 9. On May 9, 2002, Mr. Adelman filed a response to PG&E’s application for rehearing, also recommending denial.

IV. DISCUSSION

The California Supreme Court has defined the nature and extent of its review of statutory interpretation by the Commission. In general, “[T]he contemporaneous administrative construction of the enactment [of a statute] by those charged with its enforcement and interpretation is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.” Coca-Cola Co. v. State Board of Equalization, 25 Cal. 2d 918, 921 (1945). See also State of South Dakota v. Brown, 20 Cal. 3d 765, 777, (1978); City of Los Angeles v. Rancho Homes, Inc., 40 Cal. 2d 764, 770-771 (1953). More specifically, “There is a strong presumption of validity of the commission’s decision . . . and the commission’s interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language . . .” Greyhound Lines, Inc. v. Public Utilities Commission, 68 Cal. 2d 406, 410-411 (1968). To pass muster as a reasonable exercise of administrative discretion, therefore, the Commission’s interpretation of Section 2827 must prove consistent with its language and purpose.

A. Decision 02-03-057 Reasonably Exempts Customer-Generators From Responsibility For Various Costs Related To Their Interconnection To Distribution.

PG&E argues that Decision 02-03-057 wrongfully exempts customer-generators from having to bear the costs their interconnection imposes on distribution.

Application at 1. Since enactment of Section 2827, however, customer-generators have been consistently treated by PG&E and other utilities as retail customers rather than generators for purposes of determining eligibility. Decision 02-03-057, mimeo, at 10. Moreover, this treatment is entirely consistent with the purpose of Section 2827 to encourage residential customers to install environmentally sensitive generation: “To interpret the statute otherwise would require an assumption that renewable generation would already be installed by residential customers without the need of encouragement the statute explicitly states as its purpose.” Id. at 8. Accordingly, pursuant to Section 2827(a), customer-generators should continue to be likened to residential ratepayers who are not required to bear individually the costs of their interconnection to distribution. Indeed, as PG&E itself commented, “[T]he statute does not preclude the Commission. . . from exempting net-metering customers from some or all interconnection charges and shifting those costs to other ratepayers.” Application at 1.

B. Decision 02-03-057 Reasonably Requires Each Customer-Generator To Bear The Cost Of Meeting Certain Specified Standards And Rules Applicable To Safety And Reliability.

Mr. Adelman argues first that Section 2827(d) exempts customer-generators from having to bear the cost of any facility related to interconnection – – unless “required to be installed as an integral part of [its] generating facility.” Application at 3-4; also at 5. This argument ignores the requirement of Section 2827(f), however, that each customer-generator meet various standards and rules applicable to safety and reliability. Facilities installed for this purpose should be considered integral to generation, therefore, and their associated costs the responsibility of the customer-generator. In this regard, Ordering Paragraph 2 provides,

Eligible customer generators shall be responsible for the costs of interconnection facilities, on either side of the meter, necessary to meet the safety and performance requirement of the National Electrical Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, and, where, applicable,

rules of the Public Utilities Commission regarding safety and reliability.

Mimeo at 14. As the Commission earlier emphasized, “[A]ny connections to the distribution system [must] not interfere with [its] safety and reliability.” “Order Instituting Rulemaking into Distributed Generation,” mimeo, at 8.

C. Decision 02-03-057 Does In Fact Limit The Costs That A Customer-Generator Must Bear To Those Which Are Incurred For Purposes Of Safety And Reliability Or Are Otherwise Related To Generation.

Mr. Adelman argues next that Section 2827 exempts customer-generators from the costs of facilities necessary for safety and reliability, “except to the extent such facilities are required by applicable codes and are an integral part of the customer generators solar or wind electrical generating system within the meaning of the first sentence of section 2827(f).” Application at 7. In fact, however, Decision 02-03-057 precisely limits the costs customer-generators must bear to those whose incurrence is statutorily required for purposes of safety and reliability or are otherwise related to generation. Decision 02-03-057 defines “interconnection facilities” to mean “protection devices (including circuit breakers, ground fault detection systems, and automatic transfer trip communications systems), transformers (new and upgrades), and metering equipment required solely as a result of a new generator connecting to the utility system that cannot be used to serve the utility’s general customer population.” Mimeo at 7. Without exception, installation of these facilities is necessary to meet the standards and rules specified by Section 2827(f). In turn, all other costs, except those otherwise related to generation, should be borne by ratepayers generally. Id.

D. Decision 02-03-057 Does Not Preclude The Development Of Contracts And Tariffs Required By Section 2827(c)(i).

Mr. Adelman argues further that the lack of clear direction in Decision 02-03-057 regarding responsibility for the costs of interconnection will prevent the development of contracts and tariffs for distributed generation. Application at 8.

Under Section 2827(c)(1), “Every electric provider shall develop a standard contract or tariff providing for net energy metering, and shall make the contract available to eligible customer-generators, upon request.” In no way, however, does Decision 02-03-057 preclude the development of any such contract or tariff. Rather, Decision 02-03-057 quite clearly specifies the relative responsibilities of customer-generators and ratepayers generally. Thus, contracts and tariffs may be readily developed to provide that customer-generators bear the costs of facilities necessary for safety and reliability, with other ratepayers responsible for the remainder.

E. Decision 02-03-057 Fully Complies With Section 1705.

Mr. Adelman argues finally that Decision 02-03-057 violates Section 1705 of the Public Utilities Code by failing to include any finding of fact or conclusion of law supporting its allocation of the cost imposed by a customer-generator’s interconnection. Application at 8. The scope of Section 1705 is more limited, however, than Mr. Adelman suggests. “Under Section 1705,” the California Supreme Court has explained, “the Commission must separately state findings and conclusions upon the material issues of fact and law that determine the ultimate issue . . .” California Motor Transport Co. v. Public Utilities Commission, 59 Cal.2d 270, 275 (1963). In full compliance with this requirement, Decision 02-03-057 sets forth a separate conclusion of law on each issue material to the determination of the responsibility for the costs caused by a customer-generator’s interconnection:

3. Eligible customer-generators should bear the costs of interconnection facilities, on either side of the meter, necessary to meet the safety and performance requirements of the National Electrical Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.
4. Generators eligible for net energy metering under Pub. Util. Code § 2827 are exempt from paying for costs associated with interconnection studies,

distribution system modifications, or application review fees.

Mimeo at 13. Furthermore, these conclusions are well supported in the record. Again, Section 2827(f) requires each customer-generator to meet various, specified standards and rules regarding safety and reliability, and customer-generators have been consistently treated like residential customers for purposes of determining eligibility.

V. CONCLUSION

PG&E and Mr. Adelman have failed to demonstrate that the Commission abused its discretion in determining that Section 2827 requires eligible customer-generators to bear the cost of facilities whose installation is necessary to meet various, specified standards and rules regarding safety and reliability and that all other costs, except those directly related to generation, be borne by ratepayers generally.

THEREFORE, IT IS ORDERED that:

1. PG&E's application for rehearing of Decision 02-03-057 is denied.
2. Mr. Adelman's application for rehearing of Decision 02-03-057 is denied.

This order is effective today.

Dated October 24, 2002.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners